to lose his self-control. There is only one point in this connection about which I would like to tell you, and that is about the question of suddenness. The only provocation here was a suspicion in the mind of the accused that his wife was unfaithful to him while she was working first on one estate and then on another, and that the deceased was responsible for her going to this work. That suspicion had arisen some time ago and there was no suddenness about it. Therefore in this case the defence of grave and sudden provocation does not arise."

He then went on to discuss the case on the basis that it was a case of murder or nothing and very properly pointed out that the jury would be very largely influenced by the view they took as to the truth of the confession made by the accused, for that was the most important piece of evidence on which the prosecution relied to show that it was the accused that killed the dead woman.

In our opinion the portion of the summing-up which has been quoted was a misdirection. The question is dealt with in the case of *Holmes v. Director of Public Prosecutions*[1] in the following passage from the speech of Viscount Simon, L.C., at page 597:—

"If there is no sufficient material, even on a view of the evidence most favourable to the accused, for a jury (which means a reasonable jury) to form the view that a reasonable person so provoked could be driven, through transport of passion and loss of self-control, to the degree and method and continuance of violence which produces the death it is the duty of the Judge as matter of law to direct the jury that the evidence does not support a verdict of manslaughter. If, on the other hand, the case is one in which the view might fairly be taken (a) that a reasonable person, in consequence of the provocation received, might be so rendered subject to passion or loss of control as to be led to use the violence with fatal results, and (b) that the accused was in fact acting under the stress of such provocation, then it is for the jury to determine whether on its view of the facts manslaughter or murder is the appropriate verdict."

If what the appellant said at the trial was true he was of course not guilty of any offence, but if that evidence was rejected he was at the very lowest entitled to have what he had done considered in the light of his confession which after all, was part of the prosecution case against him. And on that we are unable to agree that that as a matter of law there was no evidence on which it was open to the jury to find that the killing was not murder but culpable homicide not amounting to murder. To put it slightly differently we are not satisfied that the view could not (as distinct from would not) fairly have been taken that the offence was not murder but culpable homicide. As we see it the provocation of which there was evidence, if it was believed, was not "only.....a suspicion in the mind of the accused that his wife was unfaithful to him.....and that the deceased was responsible," about which of course there was no question of suddenness. There was evidence that the provocation was that the dead woman whom he regarded as partly responsible for his domestic trouble came towards him scolding him at a time when he was in pain and his wife's coldness in dealing with his pain had revived all his long-standing suspicions.

We do not say for one moment that had the issue of culpable homicide been left to the jury they would have decided it in favour of the appellant. Nevertheless in our view there was sufficient evidence to make the question a question of fact for the jury and not a question of law for the Judge and the appellant has therefore suffered to the extent of having the question adjudicated by the Judge when it should have been adjudicated upon by the jury.

In the circumstances the conviction for murder cannot stand and must be quashed. After consideration we have decided to follow the course taken in the case of *Chan Kau v. The Queen*[2] and not send the matter back for retrial but substitute for the conviction for murder a conviction for culpable homicide not amounting to murder in contravention of section 304 of the Penal Code and impose a sentence of ten years' imprisonment.

Order accordingly.

Solicitors: *Jayaswal & Koh.*

TAN HONG KWEE v. KOH SWEE KOK

[O.C.J. (Chua J.) December 24, 1957]

[Singapore — Suit No. 314 of 1957]

Damages — Fatal accident — Civil Law Ordinance (Cap.24), s.12 — Basis of assessment of loss of income.

In considering a claim for damages under section 12 of the Civil Law Ordinance, the Court has, in the best way it can, to find a sum of money which it thinks will fairly compensate the family of the deceased.

Cases referred to:—

(1) *Benham v. Gambling*, (1941) A.C. 157.

(2) *Heatley & Anor. v. Steel Co. of Wales Ltd.*, (1953) 1 All E.R. 489; (1953) 1 W.L.R. 405.

CLAIM FOR DAMAGES.

Denis Murphy for the plaintiff.

J. D. Donnelly for the defendant.

Cur. Adv. Vult.

Chua, J.: — The plaintiff, the administrator of the estates of Ong Bee deceased and Tan Lay Choon deceased, claims on behalf of the estates of both the deceased and on behalf of the dependants of the first named deceased damages which the estates and the dependants have suffered by reason of the negligence of the defendant in the driving of a motor vehicle whereby the said two deceased were killed.

Negligence is admitted by the defendant and special damages for funeral expenses were agreed at $750 as set out in the statement of claim. The only question for the Court to consider is the quantum of general damages to be awarded.

The deceased Tan Lay Choon was a daughter of the plaintiff and at the date of her death was 2 years old. The deceased Ong Bee was the wife of the plaintiff and was 35 years old. There is no evidence before this Court whereby damages under the head of pain and suffering can be assessed and the damages that I am awarding to the estates of the two deceased will therefore only be under the head of loss of expectation of life. The difficulties of assessing these damages have been expressed by the House of Lords in the case of *Benham v. Gambling*,[1] and bearing in mind the directions which have been laid down in that case and the fact that the value of money has fallen since the decision of that case I assess the damages for loss of expectation of life at $1,500 in the case of Tan Lay Choon and $2,500 in the case of Ong Bee.

The total damages awarded to the estate of Tan Lay Choon deceased is $1,750 and to the estate of Ong Bee deceased is $3,000.

I now turn to the damages under section 12 of the Civil Law Ordinance. The Court has, in the best way it can, to find a sum of money which it thinks will fairly compensate the husband and two children of the deceased Ong Bee. (*Heatley & Anor. v. Steel Co. of Wales Ltd.*[2]).

The evidence given by the plaintiff to prove damage can be summarised as follows: He is 46 years old and is a hawker of brooms and brushes. He rents a house for which he pays a rent of $30 p.m. He had three children, including the deceased Tan Lay Choon, and the ages of the surviving children are 12 years and 1 year. The wife used to look after the house and the three children and did all the housework and sewed all the children's clothes. In addition the wife made brooms for Tan Yan Jeok and she earned $80 p.m. He used to give the wife $80 p.m. for running the home and $30 for rent. The money he gave her was not sufficient to run the home and she used the $80 she earned on the home. After the death of his wife there was no one to look after the two children and he sent them to live with a neighbour to whom he pays $100 p.m. He now has to have all his meals out and that cost him $90 p.m. During his wife's life time he spent only $40 p.m. for his meals out.

The plaintiff and Ong Bee had been married for 10 years and the wife had been in Singapore for three years and out of the three years the wife had only worked and earned money for 9 months and that was just prior to her death. On the date of her death she was not making brooms as she had just given birth. The amount she was earning, it is true, was not supported by any books of account but Tan Yan Jeok gave evidence that her earnings ranged from $70 to $90 p.m. and there is no reason for me to doubt his evidence. I am, however, not satisfied that she used all the $80 she earned on the home and that she did not keep anything for herself. Making allowances for the cost of her food and personal expenses and clothing I estimate that her contribution to the household was about $30 p.m.

The plaintiff's counsel contends that if the wife had not died the plaintiff would have benefitted by the wife's contribution for another 21 years which is the plaintiff's expectation of life. It is extremely difficult to assess damages in a case like this. The wife's employment was precarious and it is very uncertain how long she would have worked if she had lived. She was under no legal obligation to assist the plaintiff or to contribute towards the household expenses. She might if she had lived at some time or other refuse to contribute to the household expenses and use all her earnings on herself. Assuming that she would work for another 21 years, the total amount that she would have contributed to the household expenses at $30 p.m. would be $7,560. Against this figure must be set off the probability of death due to subsequent childbirth, unemployment, illness, disinclination to contribute, etc. on the part of the deceased, all of which are purely speculative. I think a fair deduction would be 30% from the above figure.

There are other matters which I have to take into account in assessing damages. Firstly

the expense incurred by the plaintiff of sending his two children to a neighbour so that they can be properly looked after. It is not challenged by the defendant that the plaintiff is paying $100 p.m. to his neighbour to look after, clothe and feed the two children. The eldest child who is now 12 years old does not require much looking after as he is attending school and will presumably be working in 4 years time. The youngest child is one year old and will have to be looked after for some time. If the children are not looked after by the neighbour the alternative would be for the plaintiff to engage a servant to look after them and that would cost in the neighbourhood of $100 p.m. also. It is highly probable that the plaintiff will remarry soon and when he does his new wife will doubtless look after his two children thus relieving him of the expense of having them looked after by the neighbour. Another factor to be taken into consideration is the uncertainty of life of the children. Secondly the extra expense the plaintiff is now incurring in having to take all his meals out. In his Statement of Claim he claims that the extra expense is $30 p.m. while in his evidence he says it is $50 p.m. I will take into consideration that his extra expense is $30 p.m. Here again I have to take into consideration the possibility of his remarrying and also the uncertainty of his life.

I have as I have said to assess the damages in the best way I can and in addition to the factors which I have set out I have also taken into consideration the fact that the plaintiff and the two children would be receiving a lump sum payment. Taking all the considerations into account I have come to the conclusion that a fair assessment of damages under section 12 of the Civil Law Ordinance would be $10,000.

From this sum of $10,000 must be deducted the two sums awarded under section 7 of the Civil Law Ordinance, namely $1,500 and $2,500 leaving a sum of $6,000 which is to be apportioned as follows:—

Tan Hong Hwee, widower of the deceased	$3,500
Tan Oh Huan, 12 years old son of the deceased	750
Tan Sam Hock, 1 year old son of the deceased	1,750

There will therefore be judgment for the plaintiff in the sum of $10,750 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy, Dunbar & Chung; Battenberg & Talma.*

DADHI RAL YADO v. MUKAT RAI

[A.C.J. (Wee Chong Jin J.) October 31, 1957]

[Singapore — District Court Appeal No. 14 of 1957]

Landlord and Tenant — "Premises" — Meaning of — Onus of proof as to when a particular building was built — Standard rent — No evidence of previous letting — Control of Rent Ordinance — Purpose of.

Two points were raised in this appeal: (i) the appellant (tenant) contended that the trial Judge was wrong in law in that he in effect held that the premises in question were not premises subject to the provisions of the Control of Rent Ordinance by holding that the onus of proving that the said premises were subject to the provisions of the Ordinance lay on the appellant, and by holding that the appellant had failed to discharge this onus; (ii) the appellant contended that the trial Judge was wrong in law in that he in effect held that the arrears of rent claimed by the respondent at the monthly rate of $30 was in excess of that legally recoverable by the respondent by virtue of the provisions of the Ordinance.

Held: (1) the present Control of Rent Ordinance and the prior Ordinances dealing with the same subject matter were passed for the purpose of preventing *inter alia* the rent of all buildings in the Colony being increased or standing at a higher amount than that prevailing as at the 1st day of August 1939, or if first let subsequent to that date, as at the date of the first letting. The purpose was *inter alia* to intervene between landlord and tenant in order to control the rent payable to the landlord. On the true construction of the whole of the definition of "premises", the legislature has placed the onus of proving that a particular building was built or completed after the 7th day of September 1947, on the landlord;

(2) the onus in this case lay in the first instance on the appellant (tenant) to prove as to what was the standard rent but in the circumstances here he had discharged that onus and established a *prima facie* case and no attempt had been made by the respondent to discharge that *prima facie* case.

Appeal allowed.

Cases referred to:—

(1) *White v. Bembridge*, (1935) 1 K.B. 244.
(2) *Keane v. Clarke*, (1951) 2 K.B. 732.
(3) *Annamalai v. Yeoh Kee Tin*, (1957) M.L.J. 9.
(4) *Abrath v. North-Eastern Rly. Co.* 49 L.T. 618.
(5) *Bolger v. Daley*, (1925) 2 I.R. 42.

DISTRICT COURT APPEAL.

G. J. Okell for the appellant.

K. K. Bezboruah for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: — This is an appeal from the judgment of the learned District Judge in an